

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THEODORE SMITH, 13 Civ. 2395 (SJ) (RER)

AMENDED COMPLAINT

Plaintiff,

PLAINTIFF DEMANDS A
TRIAL BY JURY

- against -

THE CITY OF NEW YORK, THE NEW YORK
CITY POLICE DEPARTMENT, New York City
Police Officer UC C0092, whose name
is currently known, New York City
Police Officer Detective Timothy
Erwig, New York City Police Officer
Sergeant Ed Fackler and New York City
Police Officer Detective "John" Stopa,
whose first name is currently unknown,

Defendants.

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Plaintiff, Theodore Smith, by his attorneys, The Law Offices
of Daniel W. Isaacs, PLLC, complaining of the defendants, The City
of New York, The New York City Police Department and New York City
Police Officers UC C0092, whose name is currently unknown,
Detective Timothy Erwig, Sergeant Ed Fackler and Detective "John"
Stopa, whose first name is currently unknown, individually and as
New York City Police Officers, alleges as follows:

NATURE OF THE ACTION

1. This action is brought to recover for the wrongful
arrest, false indictment, malicious prosecution, illegal
detention, false imprisonment, illegal search and violation of the

civil rights of the plaintiff, Theodore Smith, by the defendants.

JURISDICTION

2. This matter is based upon the violation of plaintiff's civil rights under 28 U.S.C. Section 1983.

3. This Court has original jurisdiction of all civil actions arising under the constitution, laws or treaties of the United States.

4. Therefore, this Court has jurisdiction over this dispute pursuant to 28 U.S.C. Section 1331.

VENUE

5. As the acts complained of occurred in the County of Kings, venue is proper in the District pursuant to 28 U.S.C. Section 1391(b).

FACTUAL ALLEGATIONS

6. That at all times hereinafter mentioned the plaintiff was and still is a resident of the County of Kings, City and State of New York.

7. That prior hereto, on March 23, 2012, and within the time prescribed by law a sworn Notice of Claim stating among other things, the time when and the place where the injuries and damages were sustained, together with plaintiff's demand for adjustment thereof was duly served on the claimant's behalf on the Comptroller of the City of New York and that thereafter said Comptroller of the City

of New York refused or neglected for more than thirty days and up to the commencement of this action to make any adjustment or payment thereof, and that thereafter, within the time provide by law, this action was commenced.

8. That on June 12, 2012, pursuant to General Municipal Law 50(h), the plaintiff testified under oath at a hearing at the office of Jane M. Barrett & Associates, L.L.P. at 189 Montague Street Brooklyn, New York.

9. That this action is being commenced within one year and ninety days after the accrual of this cause of action, or within the time allowed by law.

10. That at all times hereinafter mentioned, the New York City Police Department was an agency of the City of New York.

11. That at all times hereinafter mentioned UC C0092, whose name is currently unknown to plaintiff, Detective Timothy Erwig, Sergeant Ed Fackler and Detective "John" Stopa, whose first name is currently unknown, were police officers employed by the New York City Police Department.

12. That at all times hereinafter mentioned UC C0092, whose name is currently unknown to plaintiff, Detective Timothy Erwig, Sergeant Ed Fackler and Detective "John" Stopa, whose first name is currently unknown were agents, servants and/or employees of defendant The City of New York.

13. That in October of 2011 defendant UC C0092 falsely testified to a Grand Jury of the Special Narcotics Court of the

City of New York that the plaintiff had sold him heroin, following which an indictment was issued based on said false and malicious testimony.

14. That on August 10, 2011 at approximately 9:00 p.m. at 419 Lafayette Avenue Apartment 2R, Brooklyn, New York, New York City Police Officers Detectives Timothy Erwig, Sergeant Ed Fackler and Detective "John" Stopa, without cause, illegally searched the apartment of plaintiff, illegally detained the plaintiff, falsely arrested the plaintiff, falsely indicted the Plaintiff, falsely imprisoned the plaintiff until his release on February 23, 2012 and, violated the civil rights of the Plaintiff.

AS AND FOR A FIRST CAUSE OF ACTION FOR ILLEGAL SEARCH

15. That on August 10, 2011, the defendants did
illegally search the plaintiff's person.

16. That the plaintiff did not consent to the
search of his person.

17. That all of the foregoing occurred without any
actions of the plaintiff contributing thereto.

18. That as a result of the foregoing, the
plaintiff has been damaged in the amount of One Million
(\$1,000,000.00) Dollars.

AS AND FOR A SECOND CAUSE OF ACTION FOR FALSE ARREST

19. Plaintiff repeats, reiterates and realleges
each and every allegation set forth in paragraphs "1" to

"18" of this complaint with the same force and effect as if set forth at length herein.

20. That on or about August 10, 2011, the Defendants acting in concert and in the course of their Employment and under the authority of law did cause the plaintiff to be falsely arrested.

21. That the plaintiff was arrested without probable cause.

22. That all of the foregoing occurred without any actions of the plaintiff contributing thereto.

23. That as a result of the foregoing, the plaintiff has been damaged in the amount of One Million (\$1,000,000.00) Dollars.

AS AND FOR A THIRD CAUSE OF ACTION FOR FALSE IMPRISONMENT

24. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" to "23" of this complaint with the same force and effect as if set forth at length herein.

25. That on or about August 10, 2011, defendants Acting in concert and in the course of their employment, under the authority of law did cause the plaintiff to be be falsely imprisoned.

26. That the plaintiff was falsely imprisoned from August 10, 2011 to February 23, 2012.

27. That all of the foregoing occurred without any actions of the plaintiff contributing thereto.

28. That all charges against plaintiff were dismissed by the Criminal Court of the City of New York on March 13, 2012.

29. That as a result of the foregoing, the plaintiff has been damaged in the amount of One Million (\$1,000,000.00) Dollars.

AS AND FOR A FIFTH CAUSE OF ACTION FOR MALICIOUS PROSECUTION

30. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" to "29" of this complaint with the same force and effect as if set forth at length herein.

31. That in October of 2011 UC C0092 engaged in the malicious prosecution of plaintiff by falsely testifying in the course of his employment and under the authority to law to a Grand Jury of the Special Narcotics Court of the City of New York thereby causing an indictment to be issued and causing the plaintiff to be falsely arrested and imprisoned.

32. That absent said false testimony defendants lacked probable cause to believe a criminal prosecution could succeed.

33. That in falsely testifying to secure an indictment said defendant acted with malice,

34. That the plaintiff was falsely arrested and then imprisoned from August 10, 2011 to February 23, 2012 based on the improper indictment secured by false testimony.

35. That all of the foregoing occurred without any actions of the plaintiff contributing thereto.

36. That all charges again plaintiff were dismissed by the Criminal Court of the City of New York on March 13, 2012 due to UC C0092's failure to identify plaintiff in a lineup.

37. That as a result of the foregoing, the plaintiff has been damaged in the amount of One Million (\$1,000,000.00) Dollars.

**AS AND FOR A FIFTH CAUSE OF ACTION FOR VIOLATION OF
PLAINTIFF'S CIVIL RIGHTS**

38. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" to "37" of this complaint with the same force and effect as if set forth at length herein.

39. As a result of the illegal and improper acts alleged in the prior causes of action all of which were done intentionally and with deliberate and undue callous disregard of plaintiff's rights, plaintiff was deprived of his Constitutional Rights secured under the 4th, 5th and 14th amendments of The Constitution of The United States and 42 USC Section 1983.

40. That as a result of the foregoing, the

plaintiff has been damaged in the amount of One Million (\$1,000,000.00) Dollars.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment directing defendants to pay plaintiff compensatory damages for the damages and associated expenses suffered in the sum of One Million (\$1,000,000.00) Dollars on the First Cause of Action; One Million (\$1,000,000.00) Dollars on the Second Cause of Action; One Million (\$1,000,000.00) Dollars on the Third Cause of Action; One Million (\$1,000,000.00) Dollars on the Fourth Cause of Action; One Million (\$1,000,000.00) on the Fifth Cause of Action; the costs of this action together with reasonable attorneys' fees; such other and further relief as this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

Dated: New York, New York
September 19, 2013

Yours, etc.,

LAW OFFICES OF DANIEL W. ISAACS, PLLC

By: _____
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